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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,423	12/01/2006	Malcolm Tom McKechnie	102792-547 (11018P1 US)	8984
27380	7590	05/12/2010		
PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			EXAMINER DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			05/12/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/574,423

**Applicant(s)**

MCKECHNIE, MALCOLM TOM

**Examiner**

Lorna M. Douyon

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 9-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. This action is responsive to the amendment filed on February 1, 2010.
2. Claims 1-6, 9-15, 17-23 are pending. Claims 7, 8 and restricted claim 16 are cancelled. Claims 17-23 are newly added. Claim 1 is currently amended.
3. It is again suggested that a "Brief Description of the Drawings" be added to the specification in the order as described in the previous office action.
4. The rejection of claims 1-5, 8, 10-14 under 35 U.S.C. 102(b) as being anticipated by Saito (JP 2002275050) is withdrawn in view of Applicants' amendment.
5. The rejection of claims 1-6, 8-15 under 35 U.S.C. 102(b) as being anticipated by Lorenzi et al. (US Patent No. 6,322,801) is withdrawn in view of Applicants' amendment.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-6, 9-15, 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi et al. (US Patent No. 6,322,801), hereinafter "Lorenzi".

Lorenzi teaches a substantially dry, disposable personal care article suitable for cleansing wherein the article comprises: a) a water insoluble substrate comprising a first layer that includes a nonwoven ply and a polymeric net arranged with the nonwoven ply; and b) a cleansing component disposed adjacent to said first layer of a lathering surfactant (see abstract). Cationic surfactants are useful in the articles, and preferred cationic surfactants are fatty amines such as cetyltrimethylammonium bromide (see col. 15, lines 18-27), which are also germicidal. Zeolites and other compounds which react exothermically when combined with water may also be optionally included in the articles (see col. 31, lines 60-63). The articles comprise from about 10% to about 1,000%, preferably from about 50% to about 600%, and more preferably from about 100% to about 250%, based on the weight of the water insoluble substrate, of the surfactant, and the articles preferably comprise at least about 1 gram, by weight of the water insoluble substrate, of a surfactant (see col. 10, lines 31-45). In Examples 18-19, Lorenzi teaches skin cleansing and conditioning articles, wherein the cleansing component of Example 1, which comprises a surfactant, is three-roll milled with aluminosilicate (which generates heat due to an exothermic reaction upon exposure to water) in a ratio of 1:1 and 10 grams of the cleansing component is applied to one side of a layer of batting, sealed with a second nonwoven layer, and thereafter 4 grams of a skin conditioning composition is applied to the lofty batting side, and the product is stored in a sealed, metallized film package until ready for use (see col. 46, line 64 to col. 47, line 37). Even though Lorenzi does not disclose an article adapted for cleaning a surface of an inanimate object, or an article adapted to provide for substantially streak free cleaning of

the inanimate surface, it has been held that the recitation that an element is "adapted to" perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. The recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). In addition, Lorenzi teaches that the articles comprise from about 10% to about 1,000%, based on the weight of the water insoluble substrate, of one or more surfactants (see col. 10, lines 31-47; claim 1). Lorenzi, however, fails to specifically disclose the amount of cleaning agent or surfactants in amounts as those recited, and the loading of the cleaning agent on the substrate in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the surfactant, and the loading of the cleaning agent on the substrate through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

In addition, the word "about" permits some tolerance. At least about 10% was held to be anticipated by a teaching of a content not to exceed about 8%, see *In re Ayers*, 154 F 2d 182,69 USPQ 109 (CCPA 1946). A pressure limitation of 2-15 pounds

per square inch was held to be readable on a reference which taught a pressure of the order of about 15 pounds per square inch, see *In re Erickson*, 343 F 2d 778, 145 USPQ 207 (CCPA 1965). Hence, the lower limit of about 10% by weight of surfactant (i.e., cleaning agent) of Lorenzi reads on "5% by weight of cleaning agent" of the instant claims.

### ***Response to Arguments***

8. Applicants' arguments filed February 1, 2010 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Lorenzi, Applicants argue that Lorenzi's composition require at least twice of the maximum amounts of the surfactant which is now claimed in the present claim 1.

The Examiner respectfully disagrees with the above arguments because, as stated above, the word "about" permits some tolerance. At least about 10% was held to be anticipated by a teaching of a content not to exceed about 8%, see *In re Ayers*, 154 F 2d 182,69 USPQ 109 (CCPA 1946). A pressure limitation of 2-15 pounds per square inch was held to be readable on a reference which taught a pressure of the order of about 15 pounds per square inch, see *In re Erickson*, 343 F 2d 778, 145 USPQ 207 (CCPA 1965). Hence, the lower limit of about 10% by weight of surfactant (i.e., cleaning agent) of Lorenzi reads on "5% by weight of cleaning agent" of the instant claims.

***Conclusion***

9. **This action THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1796